

1 Hearing date: Friday, September 13, 2019
2 Hearing time: 9:00 a.m.
3 Judge/Calendar: Hon. James J. Dixon
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7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 TIM EYMAN, *et al.*,

13 Defendants.
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NO. 17-2-01546-34

PLAINTIFF STATE OF
WASHINGTON'S MOTION FOR
NON-MONETARY SANCTIONS
AGAINST THE EYMAN
DEFENDANTS

1 **I. INTRODUCTION**

2 Plaintiff State of Washington (State) moves the Court for an order of additional, non-
3 monetary, sanctions, pursuant to CR 37, against Defendant Tim Eyman (Eyman) and Defendant
4 Tim Eyman Watchdog for Taxpayers LLC (Watchdog) (collectively Eyman Defendants). The
5 State requests that this Court enter an order against the Eyman Defendants finding that the
6 payments from supporters that Defendant Eyman has received since 2012, totaling \$766,447, are
7 “contributions” in support of ballot propositions as defined by RCW 42.17A.005. This sanction
8 makes logical sense because one of the most significant deficiencies that has kept the Eyman
9 Defendants in contempt is their refusal to disclose who provided those contributions.
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11 The Eyman Defendants have been in contempt of this Court for nearly 17 months. In that
12 time, they have accrued more than \$200,000 in contempt sanctions, the large majority of which
13 remain unpaid. As of the filing of this motion, it has been more than two months since they last
14 supplemented their discovery responses. Clearly the daily fine is not enough to gain compliance.
15

16 **II. STATEMENT OF FACTS¹**

17 **A. Discovery History**

18 **1. The State’s first set of discovery**

19 The State served its initial discovery requests on the Eyman Defendants on June 13, 2017.
20 First Declaration of Tony Perkins (Perkins Decl.) ¶ 5. When the Eyman Defendants failed to
21 fully respond, this court issued an order compelling complete responses on December 8, 2017.
22 *Id.* ¶ 6. After the Eyman Defendants failed to comply with that order, this Court found them in
23 contempt as of February 16, 2018, where they remain to this day. *Id.* ¶¶ 7, 17. As the Eyman
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26 ¹ Due to the page limit, a more thorough recitation of the facts can be found in the First Declaration of Tony Perkins.

1 Defendants have moved repeatedly to purge contempt, the State has repeatedly responded by
2 providing charts noting deficiencies in their discovery responses and arguing that contempt
3 should be maintained so long as they fail to comply with their discovery obligations. *Id.* ¶ 11.

4 Defendant Eyman submitted his most recent supplemental responses to the State's first
5 discovery requests on July 1, 2019. *Id.* ¶ 12. As with his prior responses, these were also
6 incomplete and deficient. *See id.*; **Ex. A.** Defendant Watchdog has not submitted supplemental
7 responses to the State's first discovery requests since March 6, 2019. *Id.* ¶ 13. Those responses
8 had the same deficiencies as Defendant Eyman's. *See id.*; **Ex. B.**

9
10 On July 1, 2019, Defendant Eyman filed his eighth motion to purge contempt with the
11 Special Discovery Master. *Id.* ¶ 14. In response, the State again submitted a chart identifying
12 remaining deficiencies in Defendant Eyman's responses. *See id.* ¶ 15; **Ex. C.** On July 10, 2019,
13 the Special Discovery Master ruled that Defendant Eyman had not complied with and had not
14 purged contempt of this Court's December 8, 2017 order. *Id.* ¶ 16. In the two months since,
15 Defendant Eyman has not supplemented his responses to the State's discovery requests at all.
16 *Id.* ¶ 17.

17
18 Among Defendant Eyman's deficient responses to the State's first discovery requests is
19 his response to Interrogatory No. 20. *Id.* ¶ 18. This interrogatory requires Defendant Eyman to
20 identify and provide certain information for his sources of income. *Id.* In his July 1, 2019
21 supplemental discovery responses, Defendant Eyman identifies no additional sources of income.
22 *Id.* ¶ 19. He asserts that nearly a million dollars in payments he received over a period of more
23 than 15 years, payments he terms "gifts," are not compensation for his political work, and were
24 not solicited or made in connection with that work. *Id.* However, this assertion is contradicted
25 by his own banking records and communications produced from his computer. *Id.*
26

1 **2. The State’s fifth set of discovery**

2 The State issued its fifth set of discovery requests to the Eyman Defendants on November
3 14, 2018. Perkins Decl. ¶ 20. After they failed to submit any responses for six months, on May
4 3, 2019, the Special Discovery Master ordered them to submit responses by May 31, giving them
5 four more weeks to comply. *Id.* ¶ 21. Defendant Eyman provided responses on May 31, 2019,
6 but nearly all of his interrogatory responses were deficient and incomplete, and he produced no
7 documents in response to the State’s requests for production. *Id.* ¶ 22.

9 On June 14, 2019, the State and Defendant Eyman held a CR 26(i) conference, during
10 which the State identified specific deficiencies in nearly every response to the State’s fifth set of
11 discovery. *Id.* ¶¶ 23-25. Between June 14 and June 27, 2019, Defendant Eyman did not
12 supplement his responses, so the State moved for a contempt recommendation. *Id.* ¶¶ 26-27. On
13 July 2, 2019, Defendant Eyman submitted supplemental responses to the State’s fifth set of
14 discovery requests. *Id.* ¶ 28. Nearly all the deficiencies that the State previously identified in its
15 June 27, 2019 contempt motion remained in Defendant Eyman’s responses. *Id.* ¶ 29; **Ex. E.** On
16 July 8, 2019, the Special Discovery Master granted the State’s motion, recommending to this
17 Court that Defendant Eyman be found in contempt of the May 3, 2019 order compelling
18 responses to the State’s fifth discovery requests. *Id.* ¶ 30.

20 The State’s fifth set of discovery requests to Defendant Eyman include multiple
21 interrogatories designed to identify solicitations and payments labelled as “gifts,” “donations,”
22 or “contributions,” as well as any other compensation or payments for election-related activity.
23 *Id.* ¶ 33. Defendant Eyman’s responses to all such interrogatories remain deficient. *Id.*

25 For example, Interrogatories 68 and 69 seek, among other things, the identities of persons
26 who have provided Defendant Eyman, his family, or Watchdog with funds labelled as “gifts,”

1 “donations,” or “contributions” as well as any other payments for election-related activity, and
2 the dates and amounts of these payments. *Id.* ¶ 34. Defendant Eyman’s responses fail to identify
3 any of the persons who his own documents confirm made payments in response to his
4 solicitations seeking funds for his election-related work, some of whom expressly noted on their
5 checks that they were for Eyman’s election-related work. *Id.* ¶ 35; *see also* **Ex. G**; **Ex. M**.
6 Although these documents originated from Defendant Eyman’s own computer and his banking
7 records, he has failed to acknowledge or identify them in responding to discovery. *Id.*

9 In Interrogatories 74 and 75, the State seeks information on funds that Defendant Eyman
10 or his family solicited or received as gifts or donations since 2010. Defendant Eyman’s only
11 “response” to Interrogatory 74 is to assert untimely and overruled objections and then reference
12 his previous document production, despite elsewhere admitting to soliciting and receiving
13 payments he describes as gifts. *Id.* ¶ 40. Defendant Eyman’s response to Interrogatory 75
14 identifies no responsive payments. *Id.* ¶ 41. Through records from two of Defendant Eyman’s
15 banks the State was able to identify some responsive payments. *Id.* However, Defendant Eyman
16 has not produced banking records or other records identifying more than half a million dollars
17 in other responsive payments that he deposited to multiple bank accounts at three different
18 institutions. *Id.* Defendant Eyman’s only supplemental response to Interrogatory 75 is to make
19 an untimely and overruled assertion of the attorney–client privilege for some of the responsive
20 information and then claim that the remaining information is “voluminous.” *Id.*

23 Interrogatories 76 and 77 request information on payments that Defendant Eyman
24 solicited and/or received as compensation for his work on any Washington state or local ballot
25 measures or initiative campaigns, other than from a registered political committee. *Id.* ¶ 42.

1 Defendant Eyman's sole response to both these interrogatories that "there were none" is
2 contradicted by the documents he produced from his own computer. *Id.*

3 In seeking to purge contempt, Defendant Eyman argued that the payments and
4 solicitations the State sought to address in Interrogatory 20 would also be responsive to the
5 State's fifth discovery requests and could be identified in response to those requests, but in his
6 responses to Interrogatories 76 and 77, he still fails to identify the information. *Id.* ¶ 51.

7
8 Finally, Defendant Eyman's responses to the State's requests for production (RFP)
9 remain deficient. These RFPs seek bank records that include those that Defendant Eyman has
10 not previously produced. *Id.* ¶ 52. The banking records Defendant Eyman produced on July 2,
11 2019 were largely limited to account statements. *Id.* ¶ 53. He has still failed to produce all records
12 covered by the requests, including un-redacted copies of items deposited, deposit slips, and
13 checks/withdrawals connected with those accounts. *Id.*; see also **Ex. E**. Defendant Eyman's
14 reports and testimony before the U.S. Bankruptcy Court indicate that at least two of the accounts
15 identified in the State's requests for production were used for personal living expenses, separate
16 from any legal defense account. *Id.* ¶ 59; **Ex. L** and **Ex. N**.

18 **3. Defendant Eyman's inconsistent story regarding gifts**

19 Defendant Eyman's discovery responses fail to address documents Defendant Eyman
20 produced that run counter to his explanation concerning gifts. Perkins Decl. ¶ 64. As established
21 by that document production, including documents taken from Defendant Eyman's own
22 computer, Defendant Eyman regularly reminds those he solicits for funds that his political work
23 is the occasion for their payment. *Id.* This includes solicitations in which he sought payment for
24 initiative work he had already performed, including specific initiative campaigns and signature
25 drives. *Id.*; see also **Ex. F**, **Ex. H**, and **Ex. I**.
26

1 In a September 22, 2016 solicitation that Defendant Eyman sent to Kemper Freeman, he
2 wrote “Last December, when my wife was in the hospital, you called me and said you’d be good
3 with another ‘10 [thousand dollars] for Tim’. I have left messages since then asking for that ‘10
4 for Tim’ for last year (for qualifying and passing I-1366) and another \$10K for this year’s
5 efforts[.]” *Id.* ¶ 44; **Ex. F.** Mr. Freeman confirmed in his deposition that he made “10 for Tim”
6 payments to Defendant Eyman to support his work on initiatives, but Defendant Eyman still has
7 not listed those payments in response to any interrogatory. *Id.* ¶ 45; **Ex. J.**²

9 In a previous solicitation sent to supporter Matt McIlwain in 2014, Defendant Eyman
10 touted his efforts to block local \$15 minimum wage requirements through an initiative to the
11 Washington Legislature. *Id.* ¶ 47; *see* **Ex. F.** Defendant Eyman specifically informed McIlwain
12 that he was not seeking a contribution to any initiative committee, but rather personal
13 compensation for his campaign work. *Id.* (“Hi Matt, check out my latest project (see emails
14 below). It’s really exciting. I’m NOT asking you to donate to this effort. I’m sending you this to
15 show you that as long as you continue to support me and my family, I will be able to take on
16 these important battles. Thank you for being a benefactor to me and my family. I really appreciate
17 it.”) *Id.*

19 The same year, Defendant Eyman sought compensation from supporters through tax-
20 deductible donations made to Citizens in Charge³ and earmarked for the benefit of Defendant
21 Eyman and his family. *Id.* ¶ 48; *see* **Ex. F.** Defendant Eyman cast these payments not as

24 ² In fact, in his deposition, Defendant Eyman refused to answer questions about funds he received through
25 his “10 for Tim” solicitation program, citing the 5th Amendment. Perkins Decl. ¶ 46; **Ex. K.** Defendant Eyman
26 invoked the 5th Amendment more than 80 times during his depositions. *Id.* The Special Discovery Master has since
ruled that Defendant Eyman has waived his 5th Amendment Privilege with respect to his written discovery
responses. *Id.* ¶ 8.

³ Citizens in Charge also refuses to provide information on these donations, despite this Court’s order
compelling them to respond.

1 donations to further any charitable cause or social welfare goal, but rather as indirect payments
2 to Defendant Eyman to compensate him for his initiative campaign work. *Id.* In several
3 solicitations, Defendant Eyman specifically stated that the “donations” to Citizens in Charge
4 were needed because the compensation paid to Defendant Eyman through his registered political
5 committee was insufficient. *Id.*

7 Defendant Eyman even issued fraudulent invoices for consulting work that he did not
8 perform to obtain compensation. *Id.* ¶ 49; *see* **Ex. F.** He described such invoices as one possible
9 alternative among many to facilitate payment to him for his campaign activity. *Id.*

10 Defendant Eyman’s banking records confirm that many donors made payments to
11 Defendant Eyman and identified his initiative campaign work as the reason for their payments,
12 referencing specific initiatives by topic and ballot number. *Id.* ¶ 50; *see* **Ex. G.**

13
14 **B. Identification of Bank Accounts Holding Compensation for Defendant Eyman’s
Political Work**

15 Defendant Eyman’s court-ordered banking records production included more than three
16 years’ worth of deposit records for his account number ending in 8393 at U.S. Bank. Perkins
17 Decl. ¶ 55. The records indicate that from February 2014 until the account was closed in June of
18 2017, Defendant Eyman deposited \$575,822 in payments from political supporters. *Id.* These
19 payments included the checks identified in **Exhibit G**, discussed above, noting compensation
20 for specific initiative campaigns. *Id.* ¶ 50. In his January 8, 2019 testimony before the U.S.
21 Bankruptcy Court, Defendant Eyman described the prior use of his U.S. Bank account to deposit
22 “gifts” from supporters. *Id.* ¶ 56; **Ex. L.**

24 Defendant Eyman’s records show more than five years’ worth of deposits to his checking
25 account number ending in 2926 at Bank of America. *Id.* ¶ 57. The records indicate that from
26

1 September 2012 through February 2018, Defendant Eyman deposited \$92,410 in payments from
2 political supporters into this account, including multiple payments of \$1,000 - \$3,000 received
3 from Peter Zieve, Craig Rhyne, Garneau Properties, Suzanne Burke, and Ms. Burke's business,
4 the Fremont Dock Company. *Id.*; **Ex. M.**

5
6 Defendant Eyman's reports and testimony before the U.S. Bankruptcy Court indicate that
7 following the closure of his U.S. Bank "gift" account, his Key Bank savings account ending in
8 4040 and his Heritage Bank checking account ending in 6634 were also used to deposit "gifts"
9 from supporters. *Id.* ¶ 58; *see Ex. L.* From July 2017 through July 2018, the two accounts
10 received \$98,215 in such deposits. *Id.*

11
12 Defendant Eyman's banking records and his reports and testimony before the U.S.
13 Bankruptcy Court indicate that Defendant Eyman uses his Bank of America account ending in
14 2926, his Key Bank account ending in 4040, and his Heritage Bank account ending in 6634 for
15 personal living expenses, separate from any legal defense account. *Id.* ¶ 59; **Exs. L, N.** These
16 three accounts, together with Defendant Eyman's closed U.S. Bank "gift" account, saw a
17 combined total of \$766,447 in deposits from his political supporters from February 2012 –
18 July 2018. *Id.* ¶ 60. Defendant Eyman's banking records and his reports and testimony before
19 the U.S. Bankruptcy Court indicate that he used these funds to pay for personal living expenses,
20 separate from any legal defense effort. *Id.* After two years, Defendant Eyman has still failed to
21 respond to discovery seeking the source and purpose of these funds. *Id.*

22 23 **III. STATEMENT OF ISSUES**

24 This Court should enter an order against the Eyman Defendants, as a sanction pursuant
25 to CR 37(b), holding that the payments identified in Defendant Eyman's records, totaling
26 \$766,447, are "contributions" in support of ballot propositions as defined by RCW 42.17A.005.

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V. ARGUMENT

A. This Court Should Enter a Finding Against the Eyman Defendants as a Sanction for Willfully And Deliberately Failing to Comply With Their Discovery Obligations Despite Being in Contempt of Court for Almost 17 Months

A. This Court Should Enter a Finding Against the Eyman Defendants as a Sanction for Willfully And Deliberately Failing to Comply With Their Discovery Obligations Despite Being in Contempt of Court for Almost 17 Months

This Court should enter an order, pursuant to CR 37, finding that the payments from donors described above, totaling \$766,447, and supported by the Perkins Decl. and its supporting exhibits, are “contributions” in support of ballot propositions as defined by RCW 42.17A.005. Each of the requirements of such a finding is met here, as is described below.

Rule 37 of the Civil Rules of Procedure provides trial courts with the authority to enter non-monetary sanctions for severe discovery violations. Relevant to the State's current motion:

PLAINTIFF STATE OF WASHINGTON'S MOTION FOR NON-MONETARY SANCTIONS AGAINST THE EYMAN DEFENDANTS	9	ATTORNEY GENERAL OF WASHINGTON Complex Litigation Division 7141 Cleanwater Drive SW PO Box 40111 Olympia, WA 98504-0111 (360) 709-6470
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1 CR 37(b)(2). “A trial court exercises broad discretion in imposing discovery sanctions under
2 CR 26(g) or 37(b), and its determination will not be disturbed absent a clear abuse of discretion.”
3 *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115, 118 (2006) (citations omitted).
4 “An abuse of discretion occurs when a decision is ‘manifestly unreasonable, or exercised on
5 untenable grounds, or for untenable reasons.’ ” *Id.* (citation omitted).
6

7 “[B]efore a trial court may impose a CR 37(b)(2)(B) sanction . . . , a showing of
8 willfulness was required[.]” *Id.* at 688. For the “most severe” sanctions, “the record must show
9 three things—the trial court’s consideration of a lesser sanction, the willfulness of the violation,
10 and substantial prejudice arising from it.” *Id.* (citing *Burnet v. Spokane Ambulance*, 131 Wn.2d
11 484, 487, 933 P.2d 1036 (1997), *as amended on denial of reconsideration* (June 5, 1997)).
12 Essentially, the *Mayer* and *Burnet* cases recognize that in order to issue a sanction under
13 CR 37(b)(2), the Court must perform the same analysis that it would undertake if the moving
14 party were asking for a default as a sanction, so authority reviewing a default as a sanction is
15 applicable here.
16

17 In reviewing a default that had been imposed for discovery violations, the Washington
18 Supreme Court noted “CR 37(d) authorizes a court to impose the sanctions in CR 37(b)(2), which
19 range from exclusion of evidence to granting default judgment when a party fails to respond to
20 interrogatories and requests for production.” *Magaña v. Hyundai Motor Am.*, 167 Wn.2d 570,
21 584, 220 P.3d 191 (2009); *see also RCL Nw., Inc. v. Colorado Res., Inc.*, 72 Wn. App. 265, 272,
22 864 P.2d 12 (1993) (affirming default entered against defendants after willfully and deliberately
23 failing to comply with the court’s discovery orders).
24

25 In *Magaña*, the Supreme Court concluded that all three of the *Burnet* conditions had been
26 met when the defendants had engaged in “willful efforts to frustrate and undermine truthful

1 pretrial discovery” and upheld a default judgment of \$8,000,000 plus attorneys’ fees as a
2 sanction. *Magaña*, 167 Wn.2d at 594. As detailed below, the Eyman Defendants’ longstanding
3 refusal to comply with discovery rules or the orders of this Court has likewise satisfied all three
4 conditions for this Court to impose the sanction sought here.

5
6 **a. The Eyman Defendants have willfully and deliberately violated
discovery rules and orders**

7 “A violation of the discovery rules may be deemed willful or intentional if done without
8 a reasonable excuse.” *Williams v. Tilaye*, 158 Wn. App. 1001, (2010), *aff’d*, 174 Wn.2d 57, 272
9 P.3d 235 (2012) (citing *Hampson v. Ramer*, 47 Wn. App. 806, 812, 737 P.2d 298 (1987)). This
10 Court already determined that the Eyman Defendants willfully violated the discovery rules when
11 it found them to be in contempt of court for failing to properly respond to the State’s First
12 Interrogatories and Requests for Production. The Eyman Defendants’ conduct over the past 17
13 months since being found in contempt further confirms this determination.

14
15 Not only have the Eyman Defendants failed to purge the original contempt, they have
16 been found in further contempt. On August 2, 2019, this Court adopted the Special Discovery
17 Master’s recommendation that the Eyman Defendants be held in further contempt “for violating
18 the Special Discovery Master’s May 3, 2019 Order compelling them to submit completed
19 responses to the State’s Fifth Set of Discovery Requests.” *See* Order (Dated August 2, 2019).

20
21 The State has provided a chart with specific interrogatories and specific deficiencies each
22 of the eight times Defendant Eyman has moved to purge contempt. Perkins Decl. ¶ 11. On several
23 occasions, the Special Discovery Master has explained to Defendant Eyman what he must do to
24 purge contempt, namely, address the specific deficiencies set forth in the State’s charts. *Id.* The
25 current chart with the remaining deficiencies is attached as **Exhibit C** to the Perkins decl.
26

1 The Eyman Defendants have not supplemented their discovery responses to the State's
2 first or fifth set of discovery requests since the Special Discovery Master recommended that they
3 be held in contempt again, two months ago, and they have not made any requests to Special
4 Discovery Master or to the Court for contempt to be purged during that time.

5
6 As stated above, a party "willfully" violates discovery rules when he or she does so
7 without reasonable excuse. *Williams v. Tilaye, supra*. The Eyman Defendants offer no
8 reasonable excuse why they have failed to properly respond to discovery *for more than two*
9 *years*, nor could they. The record of this case plainly demonstrates that the Eyman Defendants
10 willfully and deliberately violated the discovery rules and this Court's orders.

11 **b. This Court has explicitly considered and imposed lesser sanctions on**
12 **the Eyman Defendants to no avail**

13 This Court has imposed significant monetary sanction on the Eyman Defendants and then
14 doubled those sanctions in September 2018 to no avail. To date, the Eyman Defendants have
15 incurred more than \$200,000 in contempt sanctions. These sanctions, in place for 17 months, have
16 failed to secure the Eyman Defendants' compliance with their discovery obligations. The doubling
17 of the monetary sanctions imposed against the Eyman Defendants in September 2018, a year ago,
18 had no apparent effect. The Eyman Defendants maintain their refusal to supplement their deficient
19 responses to the State's first and fifth set of discovery requests. Here, the Court has not only
20 considered lesser sanctions on the record, but actually imposed lesser sanctions and later increased
21 them to no effect. Under these circumstances, the heightened sanction is appropriate.

22
23 **c. The State is substantially prejudiced by the Eyman Defendants**
24 **refusal to comply with discovery rules and orders**

25 The Eyman Defendants' willful disregard for and repeated violations of court orders and
26 discovery rules has substantially prejudiced the State's ability to prepare for trial. Because the

1 Eyman Defendants’ discovery violations have continued for nearly 26 months and have since
2 encompassed two sets of written discovery, the State had no choice but to proceed with all of its
3 depositions without the benefit of documents and interrogatory responses it has long been
4 entitled to receive, including the depositions of the Eyman Defendants, the Citizen Solutions
5 Defendants, and non-party witnesses including several of the donors. Perkins Decl. ¶ 31.
6

7 The best example of how the Eyman Defendants’ longstanding misconduct in discovery
8 has significantly impaired the State’s ability to prepare for trial is their concealing donor
9 identities. *Id.* ¶ 32. Both the first set and the fifth set of the State’s discovery requests include
10 interrogatories seeking information about Defendant Eyman’s long history of accepting
11 contributions to support his work on initiatives, including the names of the donors. *Id.* ¶ 33.
12

13 Interrogatory No. 20 from the State’s first set of discovery asks:

14 For any other sources of income received by Defendant Eyman since January 1, 2002,
15 state the following:

- 16 a. The person who paid Defendant Eyman;
- 17 b. The years of such compensation;
- 18 c. The services provided by Defendant Eyman for such compensation;
- 19 d. The last date compensation was paid to Defendant Eyman.

20 *Id.* ¶ 18. Defendant Eyman tried to avoid answering this question by stating that the hundreds of
21 thousands of dollars he has received from supporters over the years were “gifts” not income, so
22 he does not have to disclose any information on the payments in response to this interrogatory.
23 Both the State and the Special Discovery Master have explained that he is wrong on this point,
24 but to avoid any dispute, the State made a number of follow-up requests in the State’s fifth set
25 of discovery, which made Defendant Eyman’s obligation clear. Defendant Eyman still refuses
26 to provide this information and has now been held in contempt a second time for his failure.

1 As described above, the State is aware of \$766,447 in donations that Defendant Eyman
2 received from September 2012 through February 2018. The State has been trying to confirm the
3 source and purpose of these funds for more than two years to no avail. Defendant Eyman asserts
4 that these donations are gifts, despite the documentary evidence to the contrary which reveals
5 they are political contributions. These contributions go to the very heart of the State's case.
6 Without the names of the donors, the State cannot ask them the purpose of the donations in order
7 to refute Defendant Eyman's bald assertions that they were all gifts. Further the State was unable
8 to question the defendants and the many witnesses at their depositions regarding the donors and
9 the circumstances of the donations. Additionally, as the years have gone by, the unknown
10 donors' bank records have been destroyed because banks only maintain them for seven years.
11 Perkins Decl. ¶ 54.
12

13
14 **B. The Court Should Award the State Its Attorneys' Fees and Costs Associated with
Bringing This Motion**

15 CR 37 expressly provides for the recovery of attorneys' fees incurred in preparing this
16 motion caused by the Eyman Defendants' longstanding failure to provide complete responses to
17 the State's discovery requests. *See* CR 37(d). As detailed above, the Eyman Defendants failed to
18 fully respond to the State's discovery requests for more than two years. Their defiance of this
19 court's rules and orders left the State no choice but to file this motion. This Court should order
20 them to pay the State's fees and costs associated with this motion.
21

22 **VI. CONCLUSION**

23 Defendant Eyman has not had a job in nearly 20 years. Perkins Decl. ¶ 84; **Ex. AA.** His
24 only work has been in support of initiative campaigns, and his only income has been from donors
25 to support that work or from kickbacks related to campaigns. *Id.* Though it is clear from
26

1 documentary evidence that these donations were contributions in support of ballot propositions,
2 the issue of the purpose of these donations should now be finally established. Defendant Eyman
3 should no longer be able to hide behind his discovery violations and argue that these political
4 contributions are gifts. This Court should enter an order, as a sanction pursuant to CR 37,
5 establishing that the payments, totaling \$766,447, are “contributions” in support of ballot
6 propositions as defined by RCW 42.17A.005. Though this would not resolve all of the discovery
7 issues outstanding in this case, it would obviate a number of them and would be sufficient
8 impetus to compel the Eyman Defendants to comply with this Court’s discovery orders in order
9 to avoid further sanctions.
10

11 DATED this 5th day of September 2019.

12
13 ROBERT W. FERGUSON
Attorney General

14 /s/ Eric S. Newman

15 ERIC S. NEWMAN, WSBA #31521
16 Chief Litigation Counsel, Antitrust Division
17 S. TODD SIPE, WSBA #23203
18 PAUL M. CRISALLI, WSBA #40681
Assistant Attorneys General
Attorneys for Plaintiff State of Washington
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I declare that I did not serve on Defendants William Agazarm and Citizen Solutions, LLC

Tim Eyman
Pro Se
tim_eyman@comcast.net

I certify under penalty of perjury under the laws of the State of Washington that the

/s/ Jessica Buswell
JESSICA BUSWELL, Legal Assistant